IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.3327 OF 2002
IN
SUIT NO.3871 OF 2002

Falguni Jaymin Shah ..Plaintiff.

Vs.

Wallace Apartments Co-op.
Premises Society Ltd.
& Anr. ..Defendants.

Mr.Shyam Mehta with Mr.Snehal Shah with Mr.Jayesh Vyas i/b.M/s.Bilawala & Co. for the Plaintiff.

Mr.H.N.Thakore with Ms.Jyoti Ghag i/b.M/s.Thakore Jariwala & Associates for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 6TH DECEMBER, 2005

P.C. :

The suit is filed for a declaration that the Plaintiff is entitled to use for all purposes, all the entrances to the premises within which the structure in her possession is located. The property is owned by Defendant No.1 society. The Plaintiff is a tenant of a structure within the said property. There are various entrances to the entire property, owned by the society. The Plaintiff's case is that she is entitled to use all the said entrances.

2. The Plaintiff seeks to establish and trace her

rights to use all the entrances commencing with an agreement dated 8.4.1992 entered into between Defendant No.2 i.e. The Wallace Four Mills Company Ltd., the predecessor in title of Defendant No.1 and one Mohamed Masood Noormohamed.

3. Mr.Mehta, the learned counsel appearing on behalf of the Plaintiff placed strong reliance on clauses 12(b) and (c) in support of the Plaintiff's aforesaid contention.

4. Clauses 12(b) and (c) read as under :

> "12. The Tenant hereby covenant with the owners that :-
>
> (a) .....
>
> (b) (He shall use all entrances of the Compound) for its ingress/egress and entrance on the Tukaram Javji Road.
>
> (c) He shall be allowed his transport can come in compound from main entrance as stated above for loading / unloading purpose."

5. Mr.Mehta submitted that the aforesaid clauses were very wide and entitled the Plaintiff to use all

entrances for all purposes of ingress/egress.

6. At first blush, the argument did seem attractive but on further consideration, I am unable to accept this contention. It would not be fair to the Defendants to read these clauses in isolation. It is necessary to read the agreement as a whole. In this regard, it is pertinent to note clause 1 of the agreement which reads as under :

> "1. The Owners shall let and the Tenant shall take on tenancy from month to month the said Two Rooms with Mezzanine floors described in the schedule written hereunder and having entrance as shown in hatched colour in plan annexed hereto."

7. The Plan referred to in clause 1 of the agreement is not annexed to the plaint alongwith the agreement. Mr.Mehta however tendered a plan in Court. He fairly stated that it was not attached to the original agreement. For the purpose of this order, I will presume that it is the plan annexed to the original agreement.

8. Before going further, it is necessary only to mention that by an agreement dated 2.7.1998 entered

into between the said Mohamed Masood Noormohamed and the Plaintiff, Mohamed Masood Noormohamed sublet the said premises to the Plaintiff. Under clause 15 of that agreement, the Plaintiff was granted all the benefits of the said agreement dated 8.4.1992 entered into between the Defendants and the said Mohamed Masood Noormohamed. This, in turn, was pursuant to the right which Mohamed Masood Noormohamed had to so sublet the premises under his agreement with the Defendants. The Plaintiff's case therefore depends upon a construction of the agreement dated 8.4.1992.

9. D.K.Deshmukh, J. in an ad-interim order dated 12.12.2002 held that the Plaintiff was entitled to access the premises from Tukaram Javji Road and the other entrances in the compound would be restricted to transport, for loading or unloading the Plaintiff's goods. His Lordship therefore held that the Plaintiff's contention that she was entitled to access from all entrances for all purposes does not appear to be proper. Although I may not be bound by this observation, I am in respectful agreement with the same.

10. Clause 1 of the agreement dated 8.4.1992

clearly states that the entrance to the Plaintiff's premises is as shown in hatched colour in the plan annexed. It is important to note that the word "entrance" is in the singular and not in plural. In fact, the plan tendered by Mr.Mehta shows the entrance from Tukaram Javji Road in hatched colour.

11. Thus, if clause 1 were to be read by itself, there is no doubt that the only entrance that the Plaintiff is entitled to is the one on the Tukaram Javji Road. However, this clause, in fact, indicates that clauses (b) and (c) cannot be read in isolation to support the Plaintiff's construction thereof. If the Plaintiff's interpretation of the said clause (b) is to be accepted viz. that she is entitled to ingress/egress from all the entrances in the compound for all purposes, there no explanation why clause (c) was added for in view of sub-clause (b) even in the absence of sub-clause (c) the Plaintiff would have been entitled to use all the entrances for all purposes.

12. The only logical explanation therefore is that while it was agreed between the parties that the tenant of the premises was entitled to use the entrance on the Tukaram Javji Road, for the purpose

of loading and unloading, he was also entitled to use the main entrance. Thus, the main entrance is limited only for the purpose of loading/unloading.

13. Indeed, the Plaintiff is not prejudiced by this in any manner whatsoever. Nor did Mr.Mehta indicate any prejudice which can be caused to the Plaintiff by such an interpretation. In paragraph 12 of the plaint, it is fairly admitted that the entrances located on Tukaram Javji Road are the "most convenient means of access to the said premises". Indeed, this is so. The photographs tendered by Mr.Thakore establish this beyond doubt. There is a direct access from the road to the Plaintiff's premises. If the other access is used, the Plaintiff would have to go through the compound of the society. Nothing can be gained by the Plaintiff by doing so.

14. Apart from the mere statements of the Plaintiff, there is nothing to suggest that her predecessor in fact utilised all the entrances for all purposes throughout. There is one other factor which indicates that the interpretation now sought to be placed by the Plaintiff was not how the Plaintiff herself understood the agreement. By her

Advocate's letter dated 29.3.1999 addressed to Defendant No.1, it was stated as follows :

> "You are aware that our client by her letter dated 1st February, 1999 informed you about the Agreement of tenancy dated 8th April, 1992 executed by M/s. Wallace Flour Mills Co. Ltd. in favour of Mohamed Masood Noormohamed who was authorised to make use of all the entrances in the compound for ingress and egress to the Tukaram Javji Marg and was allowed his transport/his vehicles into the premises from the main entrance for loading and unloading purposes."

15. The Plaintiff therefore clearly drew a distinction between ingress and egress to Tukaram Javji Marg on the one hand and the permission to Mohamed Masood Noormohamed for his transport/vehicles into the premises from the main entrance for loading and unloading purposes.

16. In any event, the aforesaid makes it clear that even according to the Plaintiff, Mohamed Masood Noormohamed in fact used the main compound entrance only for the purpose of his transport/vehicles for loading and unloading goods. Prima-facie, therefore, it appears that Mohamed Masood Noormohamed himself never used all the entrances for

all purposes as contended by the Plaintiff.

17. The reliefs were sought to be supported for another reason. It was contended that outside the entrance of Tukaram Javji Road, is a garbage dump. Mr.Mehta admitted that it was an illegal garbage dump.

18. The Plaintiff had taken out a Notice of Motion being Notice of Motion No.260 of 2002 in Suit No.2379 of 1992 filed by one M.V. Desai & Ors. versus Defendant No.1 & Ors. The Plaintiff took out the Notice of Motion as an Applicant. The interlocutory proceedings taken out by various parties therein were disposed of by an order dated 27.9.2002 by D.K.Deshmukh, J. A statement on behalf of the Plaintiff herein was recorded to the effect that the Plaintiff would institute independent proceedings for establishing the right of access. It was further ordered that the arrangement brought about by an order dated 13.5.1999 passed by H.L.Gokhale, J. in Notice of Motion No.1518 of 1999 shall continue to operate for a period of three months. In case the Plaintiff succeeded in securing appropriate orders from the competent Court, the same would operate. It was provided further that in

case the Plaintiff did not secure any orders within the said three months, the arrangement brought out by the order dated 13.5.1999 shall cease to operate.

19. The order dated 13.5.1999 recorded the statement on behalf of the Plaintiff that she would apply to the B.M.C. for access from Tukaram Javji Road and that the society would co-operate with the Plaintiff in respect thereof and after separate access is created from the road, it would be open to the society to decline the entry to the Plaintiff's car. It was lastly ordered that the society would keep a space of 5 ft. x 5 ft. vacant in front of the grate.

20. From the photographs tendered by Mr.Thakore, it appears that there is a clear access now to the Plaintiff's premises from Tukaram Javji Road. From the ad-interim order passed in this Notice of Motion, the Plaintiff had preferred an Appeal. The Division Bench (to which I was a party) by an order dated 8.1.2003 did not find any infirmity in the order and modified the same only to the extent of providing that the arrangement which was made under the said order dated 13.5.1999 in Notice of Motion No.1518 of 1992 in Suit No.2379 of 1992 would

continue until the disposal of this Notice of Motion.

21. From the photographs tendered by Mr.Thakore, it is now clear that there is a direct, clean and convenient access to the Plaintiff's structure from Tukaram Javji Road. Thus, the problem of the garbage dump being in front of the access also no longer exists. In any event, the Plaintiff has not even adopted any proceedings in a competent Court in respect of such a problem which she ought to, in case it actually exists.

22. Considering the view that I have taken, I do not find it necessary to deal with the other contentions raised by Mr.Thakore under section 164 of the Maharashtra Co-operative Societies Act, and those based on the Transfer of Property Act.

23. In the circumstances, Notice of Motion is dismissed.

The arrangement which was made under the said order dated 13.5.1999 shall continue for a period of eight weeks from today.